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# Courts hold medieval notions

BY LYNN MOORE

Halifax lawyer Anne Derrick described violence against women as a form of sexual discrimination. To my mind, that is LEAF's key objective — to redefine issues in a way that reflects the experience of disadvantaged groups.

LEAF analyses these issues in a way that demonstrates a societal condonation for such behaviour. Furthermore, it argues before the courts or Parliament that such condonation equals discrimination and violates section 15 of the *Charter of Rights and Freedoms*.

Derrick argued it is not just the perpetrators of violence who propagate this form of discrimination.

Take for example the case of *Jane Doe*, where the woman matched the general description of a serial rapist's victims. She was not warned by police that she was, in their view, a prime target. The police felt that if told, Jane Doe would react in a stereotypical way — with hysteria — and

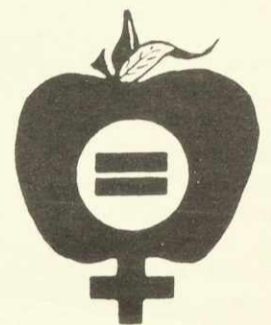
tip off the rapist. After she was sexually assaulted by this suspect, (she didn't need to tip him off with her hysteria after all) she sued the police for not having warned her, and argued that their behaviour amounted to sexual discrimination which was a contributing factor in her having been sexually assaulted.

Sex discrimination is also apparent in the way the courts deal with violence in the home. Andress Cote, Director of the Court Challenges Program in Ottawa, in speaking about her research concerning spousal homicides, noted of all the homicides in Montreal, 18% are spousal homicides. Of that 18%, 91% are femicides. Her study showed that the courts still hold medieval notions about "passions boiling over" and "loss of control".

Cote argued that murder is the ultimate expression of control, not a lack thereof. When someone is choking the life out of another, who has lost control? Does one's passions boil over long enough for 35 stab wounds

(as was the case in at least one of these murders)? Cote also noted in 28% of the spousal femicides the judge reduced the charge from murder to manslaughter because the victim had provoked the accused. In every instance "provocation" consisted of attacking the man's virility, sterility, paternity or masculinity.

*"If she's had a couple of drinks, or even a dozen, no still means no"*



LEAF has attempted to address sexual discrimination in the political forum as well. Following the *Seaboyer* decision from the Supreme Court of Canada, which struck down the rape shield law, LEAF and other women's groups met with Justice Minister Kim Campbell and played a role in proposing amendments to the sexual assault provisions in the *Criminal Code*.

According to Sheila McIntyre, a law professor at Queen's University, the amendments seek to dispel various rape myths which continue to crop up in sexual assault trials. One such myth is that if the woman is drinking, she is presumed to consent to sexual activity. To counter this, one of the proposed amendments provides, "If she's had a couple of drinks or even a dozen, no still means no," paraphrased McIntyre.

In view of the vociferous complaints from civil libertarian groups and defence lawyers about these proposed amendments, it is likely LEAF will remain involved in this debate.

Lynn Gaudet, a lawyer from the Yukon, echoed a theme which surfaced often throughout the conference. She said in order to eliminate discrimination it is important to put women's reality before the courts through social science data, expert evidence, empirically based sentencing submissions, and women's testimony.

"Women's reality" is multi-faceted. Doreen Demas described how Aboriginal women suffer violence in disproportionate numbers and how they must deal with discrimination because of their culture and skin culture, as well as sex.

LEAF enjoyed some success and suffered some losses in making these sorts of arguments. Regardless of whether they win or lose, LEAF will continue to make women's realities heard before the courts.

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